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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 LINO MEZA LOPEZ,

12 Petitioner,

13 vs.

14 UNITED STATES OF AMERICA,

15 Respondent.

CASE NO. 11cr5737-LAB-1 and
13cv1775-LAB

**ORDER DENYING WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2255**

16 Petitioner Lino Meza Lopez pleaded guilty to one count of interstate travel in aid of
17 a racketeering enterprise in violation of 18 U.S.C. § 1952, and one count of being a deported
18 alien found in the United States in violation of 8 U.S.C. § 1326. He was sentenced to 46
19 months' imprisonment, and in a pending appeal is challenging the length of the sentence.
20 He is represented by counsel on appeal.

21 On July 29, he filed a motion pursuant to 28 U.S.C. § 2255 to vacate the judgment
22 against him. He says none of his lawyers are competent, that he was coerced into pleading
23 guilty, and that he felt intimidated and under pressure during the criminal process. He also
24 questions whether the translation of court proceedings to him was accurate.

25 Ordinarily a represented party would not be permitted to file his own motion. But
26 because he is accusing his attorneys, including his counsel on appeal, of inadequate
27 representation and because he has no right to counsel to file a § 2255 motion, the Court
28 accepts his motion as filed.

1 The notice of appeal divests the Court of jurisdiction over the matters being appealed.
2 *Natural Res. Def. Council, Inc. V. Southwest Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir.
3 2001). Here, however, Lopez is raising different issues than those raised on appeal.

4 Unfortunately for Lopez, his appellate counsel filed the transcript of the change of
5 plea hearing (Docket no. 42), which shows he is not entitled to relief.

6 At the change of plea hearing, held February 21, 2012 before Magistrate Judge
7 Louisa Porter, Lopez was under oath. (Docket no. 42, 7:4–8.) The record shows a qualified
8 interpreter was present and performed the interpretation services. (See, e.g., *id.* at 15:19
9 (interpreter asking Judge Porter to repeat a question).) The transcript records Lopez’s
10 appropriate responses to questions, and all his responses are reported in English, showing
11 that he understood what was being said to him and responded appropriately. (See, e.g., *id.*
12 at 4:16–5:3 (Judge Porter questioning Lopez).)

13 At the hearing, Lopez testified he had not been promised anything other than what
14 his plea agreement provided, that he had not been threatened in any way to persuade him
15 to plead guilty, and that he was pleading guilty because he truly was guilty. (Docket no. 42,
16 12:22–13:8.) See *United States v. Sutton*, 794 F.2d 1415, 1422 (9th Cir. 1986) (bare
17 allegation of coercion, unsupported by the record, was insufficient to set aside a plea).

18 It may well be that Lopez felt intimidated and under pressure, which is only natural
19 when one has been arrested, charged with felonies, and held in custody. Where a conviction
20 is likely, a defendant might feel even more stress. But general feelings of intimidation or
21 stress because one is charged with crimes, or faces criminal penalties if convicted, do not
22 render a guilty plea involuntary, nor are they a basis for setting aside such a plea. See
23 *Tanner v. McDaniel*, 493 F.3d 1135, 1146 (9th Cir. 2007) (quoting *Miles v. Dorsey*, 61 F.3d
24 1459, 1470 (10th Cir. 1995)) (“Although deadlines, mental anguish, depression, and stress
25 are inevitable hallmarks of pretrial plea discussions, such factors considered individually or
26 in aggregate do not establish that Petitioner’s plea was involuntary.”) Lopez has not alleged

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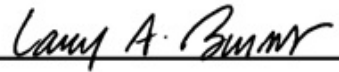
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1 any facts that would suggest he was subject to greater stress than any other defendant in
2 a similar position, nor are any apparent in the record.

3 The writ is **DENIED**.

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5 **IT IS SO ORDERED.**

6 DATED: August 1, 2013

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8 **HONORABLE LARRY ALAN BURNS**
9 United States District Judge
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